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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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DEC 31 2002

In the Matter of)
)
Amendment of Section 73.202(b),) MB Docket No. 02-331
Table of Allotments,) RM-10589
FM Broadcast Stations)
(Milford, Utah))

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

To: Assistant Chief, Audio Division
Media Bureau

REPLY COMMENTS

Sky Media, LLC ("Sky Media"), licensee of Station KFUP, Amargosa Valley, Nevada, by its counsel, hereby replies to the counterproposal filed on December 16, 2002 by Craig Morris in the above-captioned proceeding.¹ For the reasons set forth herein, the counterproposal suffers from multiple defects and should be dismissed without further consideration. In support whereof, the following is shown.

I. Morris' Counterproposal is Defective Because it is Late-Filed and in Conflict with Three Pending Rule Making Proceedings.

1. Morris proposes a new allotment at Enterprise, Utah, along with a number of changes to the FM Table of Allotments in order to provide the spacing necessary for this new allotment. Morris also proposes changes to four *pending* proposals to amend the FM Table of Allotments, because these proposals conflict with various portions of its plan. The four proposals with which Morris' counterproposal conflicts are (i) a proposal in MM Docket No. 02-14 to allot Channel 272C2 to Parowan, Utah as a substitute for vacant channel 300C2; (ii) a proposal in MM Docket No. 02-12 to create a new allotment on Channel 285C3 at Peach Springs, Utah; (iii) a proposal in MM Docket 01-135 to substitute Channel 291C1 for Channel

¹ See Notice of Proposed Rule Making, DA 02-2815 (rel. Oct. 25, 2002). The reply comment date as set forth therein is December 31, 2002.

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266C1 at Amargosa Valley for Station KPUP,² and (iv) a proposal filed on December 13, 2002 by Steven M. Greely to upgrade and relocate Station KJJJ from Lake Havasu City, Arizona to Pahrump, Nevada. In each of these cases, Morris suggests an alternate channel that can be adopted in place of the proposed channel. However, as to the first three of these pending proceedings, Morris cannot propose channel substitutions because the time for doing so has, in each case, long since passed.

2. Morris' scenario is, in essence, a counterproposal in each of five separate proceedings, and it is late-filed to three of them. A counterproposal is "a proposal for an alternative and mutually exclusive allotment or set of allotments in the context of the proceeding in which the proposal is made." *Drummond and Victor, Montana*, 15 FCC Rcd 10019, **recon. denied**, 15 FCC Rcd 19721 (2000). Morris' scenario is mutually exclusive in the context of this proceeding since it conflicts with the petition for Milford, Utah, and it is inconsistent with the Greeley proposal for Pahrump, Nevada because it conflicts with that allotment as well. It is also mutually exclusive in the context of MM Dockets 02-14, 02-12, and 01-135 since it conflicts with a timely filed proposal in each of those three proceedings. However, these latter three proceedings are currently closed to comments.

3. It is well-established that a counterproposal must be filed on or before the comment date in the proceeding with which it conflicts, and an untimely counterproposal must be dismissed. See *Lakeview, Arkansas*, 11 FCC Rcd 9895 (1996) (proposal suggesting an alternative site in a pending rule making proceeding to remove a conflict was late to the pending proceeding and therefore dismissed); see also *Barnwell, South Carolina, et al.*, 16 FCC Rcd

² The counterproposal in Docket 01-135 was filed by Marathon Media Group, L.L.C. "Marathon") Sky Media, an affiliate of Marathon, subsequently became the licensee of KPUP, and wholly supports the Marathon counterproposal.

17860 (2001); *Wellington, Texas*, 14 FCC Rcd 104 (1999). Here, Morris is late to not one but *three* proceedings. This is a fatal defect in his counterproposal.

4. Morris gives no reason why the policy not to permit untimely counterproposals should not be followed in this case. Indeed, the reasons for adhering to this policy are particularly strong here. While Morris' counterproposal remains pending, his alternative channels receive cut-off protection, even though they may never be needed. They may never be needed because the Commission may decide one or more of the pending proceedings upon which Morris' proposal is contingent in a way that does not require the alternate channels. The Commission needs to decide whether to make a channel substitution at Parowan, Utah, whether to make a new allotment at Peach Springs, Utah, whether to make a channel substitution at Amargosa Valley, Nevada, and whether to allot Channel 272C to Pahrump before it can determine whether it will be necessary to use alternate channels at those four communities. Three of these proceedings are contested, containing multiple mutually exclusive proposals, and may potentially take years to finally resolve. It is inefficient, unfair, and contrary to the public interest to tie up spectrum space, potentially for years, that could be put to immediate use by other rule making proponents or applicants. *See Winslow, Arizona, et al.*, 16 FCC Rcd 9551 (2001) (contingent requests unreasonably clutter the Commission's data base and may preclude acceptance of otherwise viable requests).

5. Moreover, a counterproposal should be capable of being effectuated when it is filed. *See Carlisle, Irvine, and Morehead, Kentucky*, 12 FCC Rcd 13181 (1997); *Cloverdale, Montgomery and Warrior, Alabama*, 12 FCC Rcd 2090 (1997). Morris' counterproposal is not capable of being effectuated now. It needs to await the outcome of four separate proceedings before it can be processed. In particular, as will be discussed below, the proposed substitution of Channel 290C at Pahrump cannot be made unless and until the allotment of Channel 272C at

Pahrump is granted, and that petition is several months away from receiving notice and comment. This procedure is not conducive to the orderly conduct of agency business.

II. Morris' Counterproposal is Also Defective for Lack of Consent of More than Two Licensees.

6. Pursuant to its *Columbus, Nebraska* policy, the Commission does not accept a proposal for rule making that entails more than two involuntary changes. *See Columbus, Nebraska*, 59 RR 2d 1185 (1986); *Castle Rock, Colorado, et al.*, 7 FCC Rcd 7668 (1992), *recon. denied*, 8 FCC Rcd 4475 (1993). The reason for this policy is that multiple channel substitutions involving existing stations can be time consuming and difficult to implement. Each station must agree to the appropriate amount of reimbursement, which can require contentious and drawn-out negotiations, and the channel changes must be carefully timed and sequenced in order to avoid losses in service and interference with existing service. *See Columbus, Nebraska and Castle Rock, Colorado, supra.*

7. Here, Morris admits that it does not have the consent of the licensees of KOAS, Dolan Springs, Utah and KSNE-FM, Las Vegas, Nevada to the changes he proposes to their facilities. In addition, Morris does not have the consent of Sky Media to the change he proposes to Station KPUP, Amargosa Valley, Nevada, thus bringing the total number of involuntary changes in his proposal to at least three and possibly four.³ As discussed above, Sky Media supports the proposal in MM Docket 01-135 to allot channel 291C1 to Amargosa Valley. However, Sky Media opposes Morris' proposal to substitute Channel 296C1 for Channel 291C1, if allotted in Docket 01-135, due to the transmitter site constraints that would accompany the use of that channel. Since, as discussed above, the processing of Morris' counterproposal must await the outcome of Docket 01-135, its channel substitution at Amargosa Valley will require an Order

³ Morris also does not have the consent of NPR Phoenix, LLC, the proponent of Channel 285C3 at Peach Springs, Utah in Docket 02-12.

to Show Cause to Sky Media, which is expected to be authorized to operate on Channel 291C1. Because Morris' counterproposal must be implemented over the objections of at least three licensees, it violates the Commission's *Columbus, Nebraska* policy and must be dismissed.

III. Morris' Counterproposal is Also Defective Because it Violates Section 1.420(i) of the Commission's Rules.

8. As discussed above, Morris' counterproposal is contingent upon three other pending and cut-off proceedings and fails to secure the consent of at least three licensees. In addition, it suffers from a further fatal defect – it proposes a nonadjacent community of license change for Station KJJJ, Lake Havasu City, Arizona in violation of Section 1.420(i) of the Commission's rules. The provisions of Section 1.420(i) permitting a change in community of license in the context of a rule making proceeding are limited to situations in which the new allotment would be mutually exclusive with the existing allotment. *See* 47 C.F.R. § 1.420(i); *Bridgeport, Texas, et al.* 16FCC Rcd 3637 (2000).

9. Here, among the changes Morris proposes is the substitution of Channel 290C for Channel 272C at Pahrump, Nevada and the modification of Station KJJJ's license accordingly. However, Channel 272C is not allotted to Pahrump, Nevada. Instead, it was proposed in connection with a community of license change for Station KJJJ, Lake Havasu City, Arizona, in a petition for rule making filed by Steven M. Greeley on December 13, 2002 – only three days before the filing of Morris' counterproposal. That petition for rule making has not even been placed on public notice yet. Because Morris' counterproposal in this proceeding is clearly dependent upon, and interrelated with, Greeley's petition to allot Channel 272C to Pahrump, the Commission must combine the two proceedings and consider the two proposals together.

10. Viewed in this manner, it is obvious what is being attempted in the combined proceedings. Station KJJJ would change its channel from Channel 272C2⁴ to Channel 290C and change its community of license from Lake Havasu City, Arizona, to Pahrump, Nevada. But this is an impermissible non-adjacent community of license change, since the proposed use of Channel 290C at Pahrump is not mutually exclusive with the current use of Channel 272C2 at Lake Havasu City. Greeley and Morris know this, and they have attempted to divert attention from this problem by splitting the upgrade up into two proceedings. However, they cannot accomplish in two proceedings that which they would be prohibited from accomplishing in one.⁵ As a result, Morris' counterproposal cannot be processed and must be dismissed under the strict standards for counterproposals. *See Cloverdale, Montgomery and Warrior, Alabama*, 12 FCC Red 2090 (1997) (counterproposals must be technically correct and substantially complete at the time they are filed).

11. Accordingly, unless the Commission opens up the Channel 290C allotment at Pahrump for competing expressions of interest, Morris' counterproposal must be dismissed. Morris must await, at the very least, the processing and granting of the Greeley petition for rule making and the eventual licensing of Station KJJJ on Channel 272C at Pahrump to refile his counterproposal.

⁴ Station KJJJ is licensed on Channel 272C2 and holds a construction permit for Channel 272B File No. BPH-20020619AAB.

⁵ Indeed, it is clear that the upgrade of Station KJJJ, and not the new allotment at Enterprise, Utah, is the actual goal of Morris' counterproposal. The Enterprise allotment would provide new service to only some 3,000 people within the proposed 60 dBu contour, and yet Morris states his willingness to reimburse the licensees of three stations (KOAS, Dolan Springs, KSNE-FM, Las Vegas, and KPUP, Amargosa Valley) for changing their channels in pursuit of that allotment. Clearly, the gains necessary to finance these changes must be coming from another source, and that source is the new **Class C** at Pahrump, which would provide service to more than a million people.

IV. A New Allotment at Enterprise, Utah Can be Achieved by Far Simpler Means.

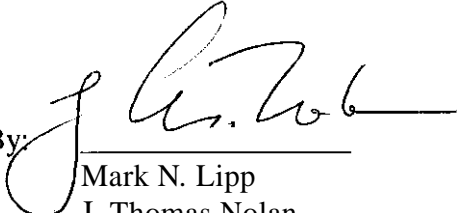
12. Morris' professed goal in this proceeding is a new allotment at Enterprise, Utah. This goal can be accomplished much more simply and at much less expense than Morris' counterproposal. Sky Media presents herewith an alternative proposal to achieve the new Enterprise allotment. *See* accompanying Engineering Statement. Sky Media's alternative reduces the number of stations involved in the scenario from ten to three, and introduces no new stations or communities. Only one Order to Show Cause is necessary. The processing and implementation of Sky Media's alternative is obviously far less complex, and consequently it stands a far better chance of a successful conclusion.

V. Conclusion


WHEREFORE, because Morris' counterproposal in this proceeding suffers from multiple defects as demonstrated herein, the Commission should dismiss it immediately so as not to tie up the spectrum and preclude other viable proposals from being filed.

Respectfully submitted,

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December 31, 2002



ENGINEERING STATEMENT

IN SUPPORT OF

REPLY COMMENTS

**MB DOCKET 02-331, DA 02-2814
RM-10589**

Sky Media, LLC

Prepared by:

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December, 2002

Engineering Statement

In Support of Reply Comments Sky Media, LLC MB Docket 02-331, RM-10589

General

On December 16, 2002 Craig Morris ("Morris") filed a counterproposal to the proposed allotment of channel 288C2 at Milford, Utah (MB Docket 02-331). This counterproposal seeks the allocation of channel 289C3 at Enterprise, Utah as that community's first local service. In order to allocate this channel at Enterprise, several spectrum modifications are proposed. However, a simpler, more elegant, solution exists to Mr. Morris' desire to allot a channel at Enterprise.

One of the two short spacings that exists with channel 289C3 at Enterprise is the license (and application) coordinates for KOAS, channel 289C, at Dolan Springs, Arizona.

Morris proposes to eliminate this short space by reallocating KOAS to channel 288C.

KOAS on channel 288C is, in turn, short spaced to a vacant allotment on channel 285A at Cal-Nev-Ari, Nevada and a proposed allocation of channel 285C3 at Peach Springs, Arizona.

Morris proposes changes to both Cal-Nev-Ari and Peach Springs that result in several station modifications and additional spectrum clutter. However, using channel 285C3 at Cal-Nev-Ari in lieu of channel 292C3 and channel 281C3 in lieu of channel 292C3 at Peach Springs eliminates most of the complexity of the Morris counterproposal. Further, it minimizes the cost of implementation, since fewer facilities will actually require modification.

Exhibits Explained

Exhibit E, Figure 1 is an allocation study showing that, with a slight site restriction, channel 285C3 can be allotted to Cal-Nev-Ari, Nevada without any further spectrum changes. Channel 285C3 is not mutually exclusive with the proposed allocation of channel 288C at Dolan Springs proposed by Morris. Exhibit E, Figure 2 is a map showing that channel 285C3 at Cal-Nev-Ari covers 100% of the community of license with a 70 dBu contour.

Exhibit E, Figure 3 is a channel study showing that channel 281C3 can be used at Peach Springs, **AZ** at the proposed allotment coordinates for channel 285C3. (Channel 285C3 at Peach Springs was proposed in MB Docket 02-12.) No further spectrum changes are needed to use channel 281C3 at Peach Springs. Exhibit E, Figure 4 is a map showing coverage of 100% of Peach Springs will be covered by a city-grade contour at the proposed location for channel 281C3.

To demonstrate the simplicity of the instant alternative compared to the Morris counterproposal, Exhibit E, Figures 5 and 6 are flowcharts of the respective proposals. A quick glance at the two proposals immediately demonstrates the differences between the two. Enterprise, Utah is much more likely to obtain its first local service via the scenario shown in Exhibit E, Figure 6 versus that shown in the Morris counterproposal (Exhibit E, Figure 5).

Conclusion

The instant proposal demonstrates that the community of Enterprise, Utah will be more likely to receive its first local service if the intricacies of the Morris counterproposal are avoided.

Statement of the Consultants

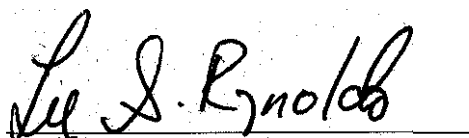
The instant engineering statement in support of reply comments filed in response to MB Docket **02-331** are prepared by Reynolds Technical Associates. It may not be used for purposes other than submission to the Commission by RTA.

It may not be reproduced in its entirety, or in part, by anyone (other than from the Commission) without the written consent of RTA.

It is prepared for Sky Media, LLC under contractual agreement, and its certification by RTA is used accordingly. If Sky Media, LLC fails in its contractual obligation, RTA reserves the right to withdraw its certification.

The information in this application is compiled from the most recent Commission and outside data. RTA is not responsible for errors resulting from incorrect data or unpublished rule and procedure changes.

For RTA:



Lee S. Reynolds

December 31st, 2002

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Engineering Statement

In Support of Reply Comments

MB Docket 02-331, RM-10589

Channel 285C3 at Cal-Nev-Ari, NV Allocation Study (Using Proposed Site at Cal-Nev-Ari as Reference)

REFERENCE		DISPLAY DATES
35 08 51 N	CLASS = C3	DATA 12-28-02
114 57 00 W	Current Spacings	SEARCH 12-30-02
----- Channel 285 - 104.9 MHz -----		

Call	Channel	Location		Dist	Azi	FCC	Margin
------	---------	----------	--	------	-----	-----	--------

	Community of	Cal-Nev-Ari	<i>Nv</i>	18.41	19.9		
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Reference Coordinates:

North Latitude: 35-18-12

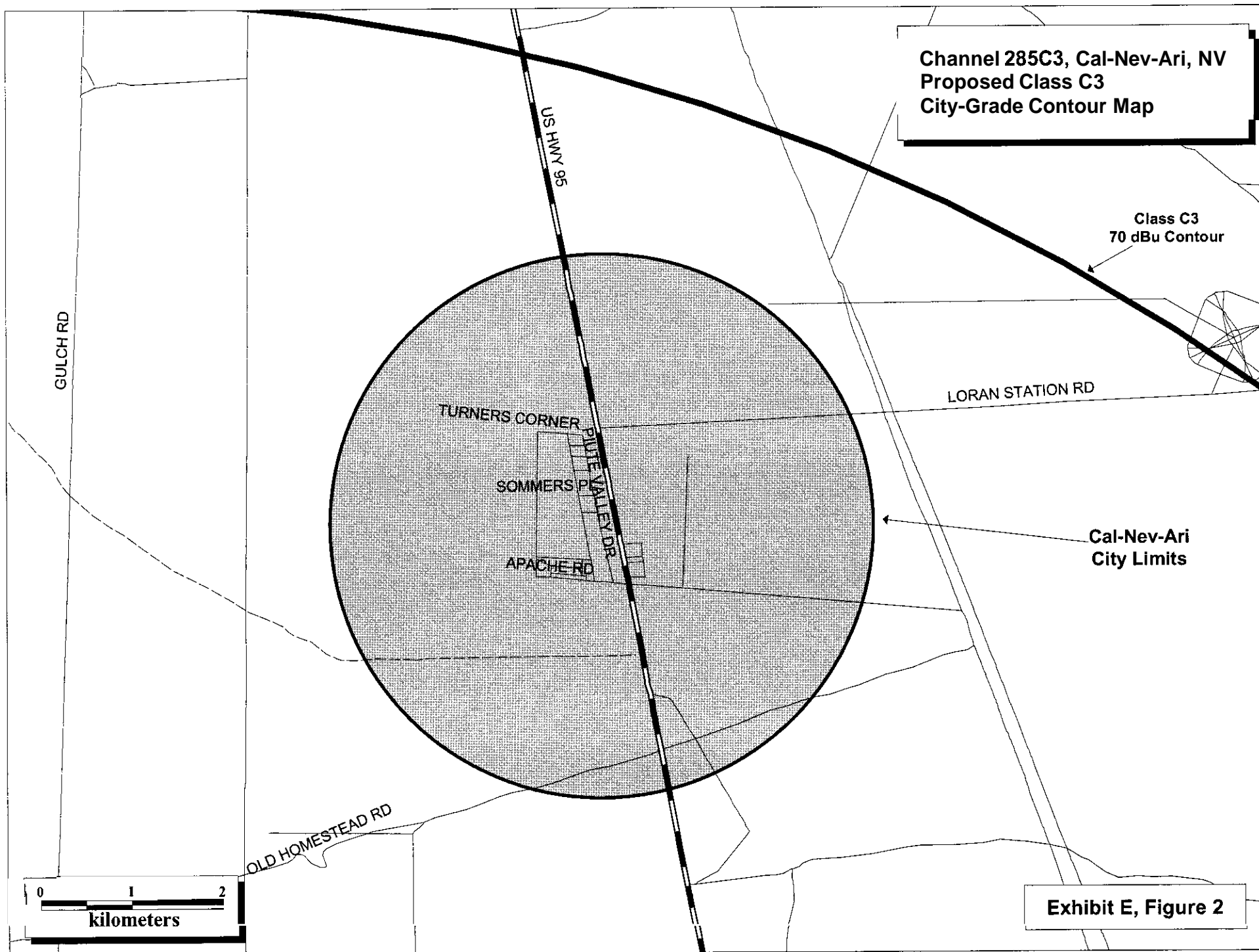
West Longitude: 114-52-51

RDEL	DEL 285A	Cal-nev-ari	<i>Nv</i>	17.25	26.2	142.0	-124.75
ALLO	VAC 285A	Cal-nev-ari	<i>Nv</i>	17.25	26.2	142.0	-124.75

Of no concern:

Channel deleted and channel 285C3 allocated
at Cal-Nev-Ari

RADD	ADD 288C	Dolan Springs	AZ	95.52	36.5	96.0	-0.48
RADD	ADD 285C3	Peach Springs	AZ	153.17	73.5	153.0	0.17
KJUL	LIC 282C	North Las Vegas	NV	103.81	331.5	96.0	7.81
KRRN	LIC 286C2	Las Vegas	NV	136.75	344.4	117.0	19.75
RADD	ADD 232A	Mohave Valley	AZ	40.35	127.2	12.0	28.35
KBHQ.C	CP 284C1	Moapa Valley	NV	174.92	12.8	144.0	30.92
KZULFM	LIC 283C2	Lake Havasu City	AZ	95.67	133.6	56.0	39.67



Engineering Statement

In Support of Reply Comments

MB Docket 02-331, RM-10589

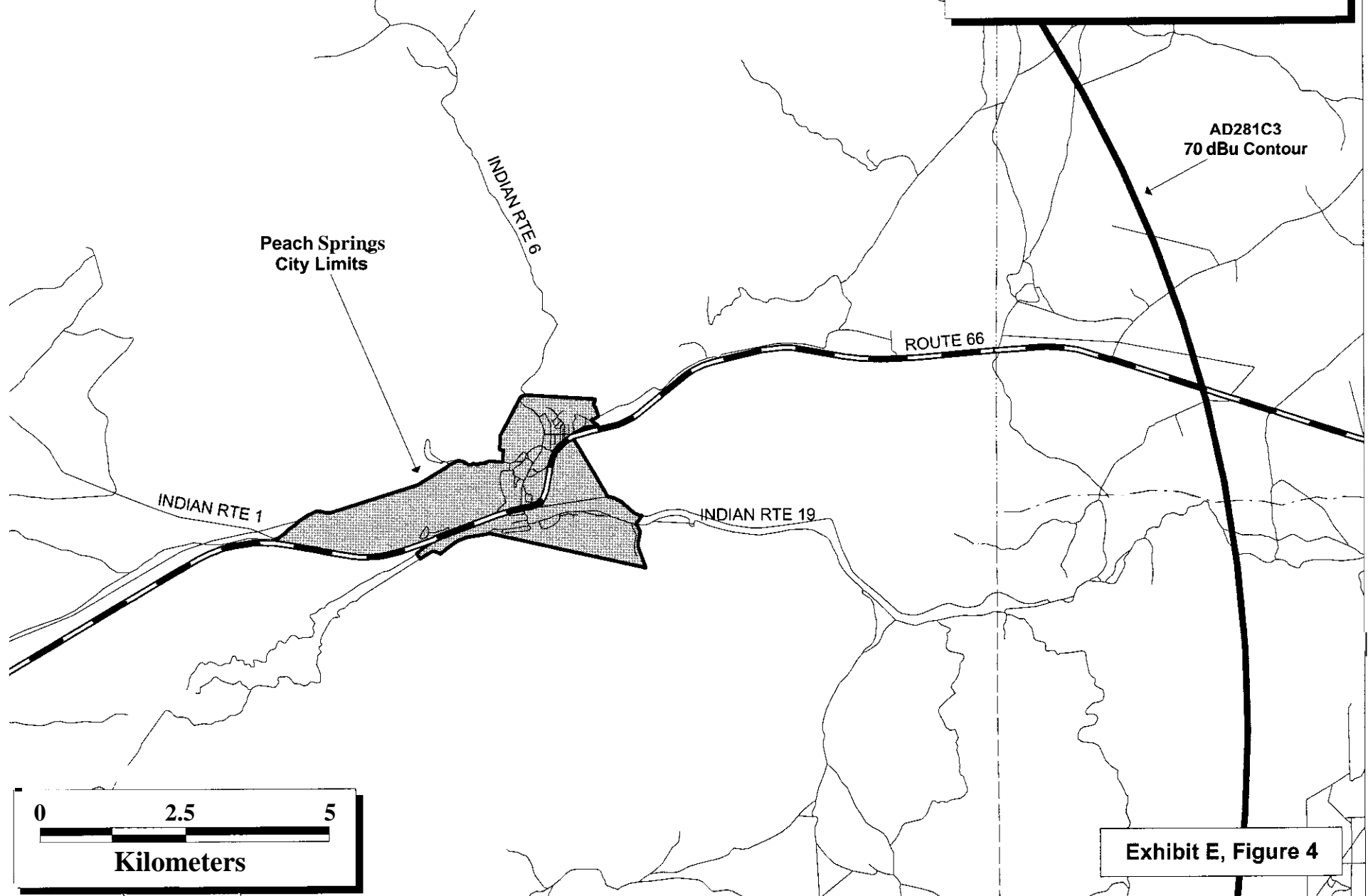
Channel 281C3 at Peach Springs, AZ Allocation Study (Using Proposed Site at Peach Springs as Reference)

REFERENCE		DISPLAY DATES
35 29 38 N	CLASS = C3	DATA 12-28-02
113 32 31 W	Current Spacings	SEARCH 12-30-02
----- Channel 281 - 104.1 MHz -----		

Call	Channel	Location		Dist	Azi	FCC	Margin

Community of		Peach Springs	AZ	11.36	69.7		
Reference Coordinates:							
North Latitude: 35-31-45							
West Longitude: 113-25-28							
RADD	ADD 280A	Ash Fork	AZ	89.39	109.4	89.0	0.39
KJUL	LIC 282C	North Las Vegas	NV	184.91	287.1	176.0	8.91
ALLO	VAC 280C	Toquerville	UT	196.61	6.7	176.0	20.61
KFPB	LIC 280C3	Chino Valley	AZ	126.73	132.9	95.0	27.73
RDEL	DEL 280C3	Chino Valley	AZ	126.73	132.9	59.0	27.73
ALLO	VAC 280B	Essex	CA	176.66	242.0	145.0	31.66
RADD	ADD 282C	Lake Montezuma	AZ	219.75	125.4	176.0	43.79
KAJM.C	CP 282C	Payson	AZ	220.36	121.9	176.0	44.36
KAJM	LIC 282C	Payson	AZ	220.36	121.9	176.0	44.36
RDEL	DEL 282C	Payson	AZ	220.36	121.9	176.0	44.36
KISF	LIC 278C	Las Vegas	NV	144.15	293.8	96.0	48.15

**Channel 281C3, Peach Springs, AZ
Proposed Class C3
City-Grade Contour Map**



AD281C3
70 dBu Contour

Peach Springs
City Limits

ROUTE 66

INDIAN RTE 1

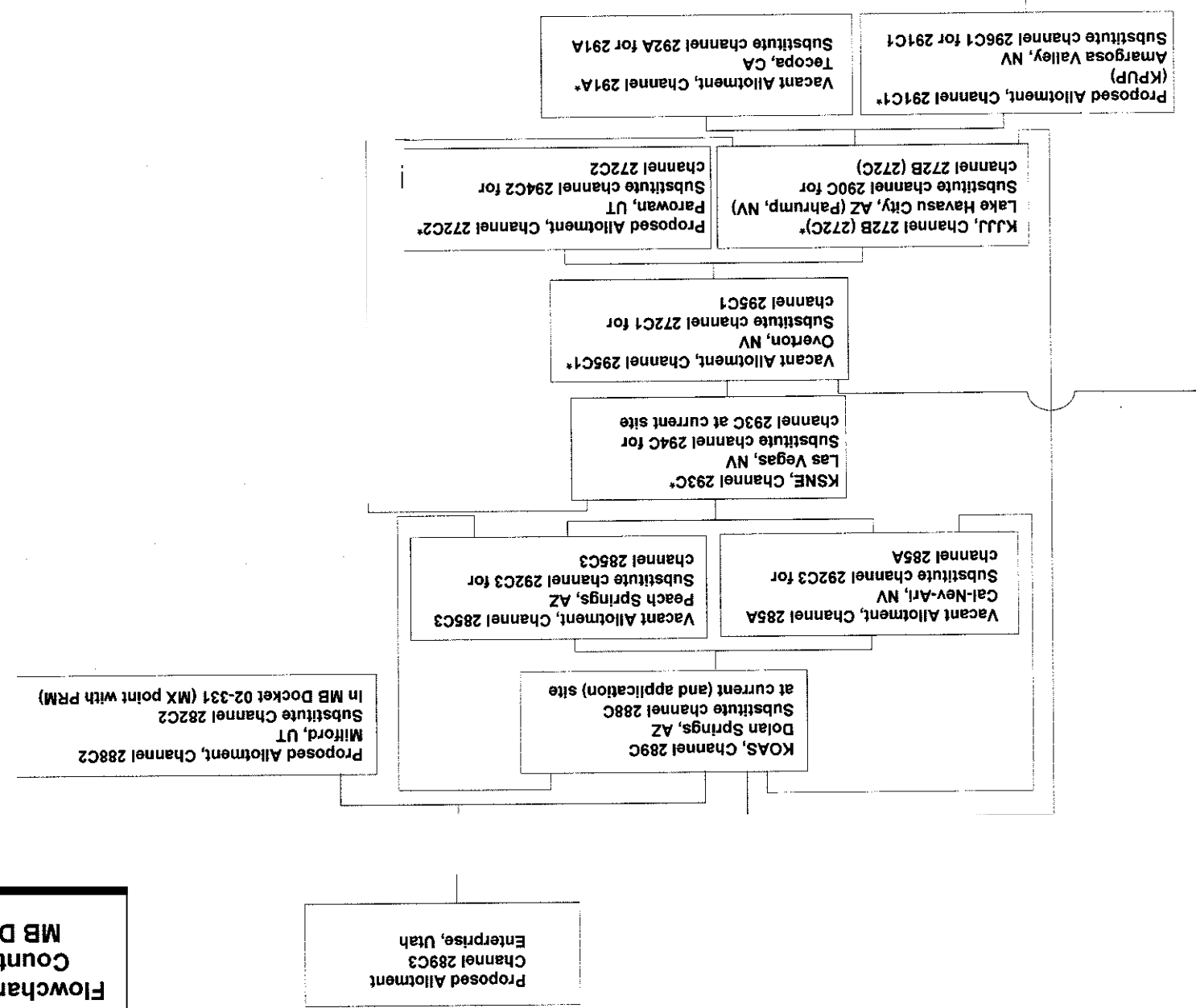
INDIAN RTE 19

0 2.5 5

Kilometers

Exhibit E, Figure 4

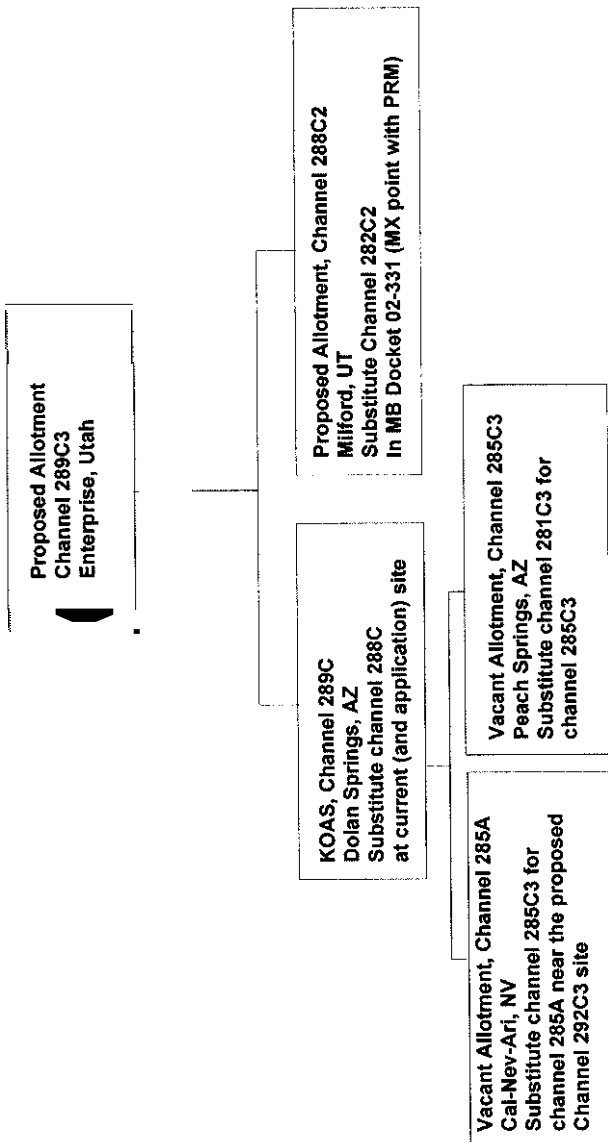
**Flowchart of Craig Morris
Counterproposal in
MB Docket 02-331**



*** Spectrum changes not needed in instant alternative**

Exhibit E, Figure 5

Flowchart of Alternative for
MB Docket 02-331
in Instant Reply Comments



CERTIFICATE OF SERVICE

I, Kay Dallosta, a secretary at the law firm of Shook, Hardy & Bacon LLP, do hereby certify that a true copy of the foregoing Reply Comments was sent this 31st day of December, 2002, via hand-delivery and United States First Class Mail, postage prepaid, to the following:

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